

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

Cheryl K.,	:	
	:	Case No. 1:21-cv-563
Plaintiff,	:	
	:	Judge Susan J. Dlott
v.	:	
	:	Order Adopting Report and
Commissioner of Social Security,	:	Recommendation
	:	
Defendant.	:	

Magistrate Judge Stephanie K. Bowman issued a Report and Recommendation (Doc. 19) on May 6, 2025 recommending that the Court grant in part the Amended Motion for Award of Attorney Fees (Doc. 16) filed by Plaintiff's counsel. Neither party filed objections.

Title 28 U.S.C. § 636(b)(1)(B) & (C) and Federal Rule of Civil Procedure 72(b)(1) authorize magistrate judges to make recommendations concerning dispositive motions that have been referred to them. When no objections are filed, “[t]here is no indication that Congress, in enacting § 636(b)(1)(C), intended to require a district judge to review [the] magistrate’s report.” *Thomas v. Arn*, 474 U.S. 140, 152 (1985); *see also Weir v. Centurion*, No. 3:19-CV-00131, 2021 WL 5165930, at *1 (M.D. Tenn. Nov. 5, 2021) (“The district court is not required to review, under a de novo or any other standard, those aspects of the report and recommendation to which no objection is made.”). Nonetheless, some district courts follow the Advisory Committee Notes to Rule 72(b) and review the report and recommendation for clear error. *See e.g., Roane v. Warden of Corr. Reception Ctr.*, No. 2:22-CV-2768, 2022 WL 16535903, at *1 (S.D. Ohio Oct. 28, 2022); *Lassiter v. Dullaghan*, No. 1:10-CV-010, 2011 WL 110259, at *1 (S.D. Ohio Jan. 13, 2011). “The district judge may accept, reject, or modify the recommended disposition; receive

further evidence; or return the matter to the magistrate judge with instructions.” Fed. R. Civ. P. 72(b)(3); *see also* 28 U.S.C. § 636(b)(1) (substantively similar).

In the Amended Motion for Award of Attorney Fees, Plaintiff’s counsel seeks attorney fees under 42 U.S.C. § 406(b) in the amount of \$50,000. (Doc. 17.) The Commissioner of Social Security filed a Response in which he neither opposes nor supports the attorney fees request. (Doc. 18.) The Magistrate Judge recommends that the Court grant in part the Amended Motion for Attorney Fees by awarding Plaintiff’s counsel attorney fees in the amount of \$40,050. This recommendation is not clear error. The higher-than-usual amount is reasonable here because Plaintiff’s counsel achieved an excellent result for her client in a case with an uncommon legal issue, but it is reduced from the amount requested to avoid a windfall.

Accordingly, the Report and Recommendation (Doc 19) is **ADOPTED** and the Amended Motion for Award of Attorney Fees (Doc. 16) is **GRANTED IN PART**. The Court **ORDERS** as follows:

- (1) Plaintiff’s counsel is awarded attorney fees in the amount of \$40,050 pursuant to 42 U.S.C. § 406(b)(1);
- (2) Plaintiff’s counsel must remit \$3,900 of this sum directly to Plaintiff upon receipt of the attorney fees award; and
- (3) the Commissioner must release to Plaintiff the remaining funds the Commissioner has withheld from Plaintiff’s past-due benefits in anticipation of the § 406(b)(1) award.

IT IS SO ORDERED.

BY THE COURT:

A handwritten signature in blue ink, reading "Susan J. Dlott", is written over a horizontal line.

Susan J. Dlott
United States District Judge